

STATE OF MAINE

CUMBERLAND ss.

SUPREME JUDICIAL COURT
DOCKET NO. BAR-03-6

BOARD OF OVERSEERS OF THE BAR

Plaintiff

v.

ORDER

Philip L. Ingeneri, Esq.
of Bangor, Maine
Me. Bar #1443

Defendant

FACTUAL FINDINGS

Defendant Philip L. Ingeneri, Esq. of Bangor is an attorney admitted to practice law in Maine and subject to the Maine Bar Rules.

In early 1999, Richard Parks Anderson had renovation work done at his furniture business in Ellsworth, known as the “Richard Parks Furniture Store.” For that purpose he entered into a fixed-price contract with John Wilbur, d/b/a John Wilbur General Contractor. A dispute arose between Anderson and Wilbur. From Anderson’s perspective, Wilbur failed to complete the work and had done an inadequate job on the work he had completed.

Wilbur filed a civil complaint against Anderson in the Superior Court (Hancock County) alleging that Anderson owed him money under their construction contract. On Anderson’s behalf, Ingeneri filed an answer, a motion to

dismiss Wilbur's complaint, and a counterclaim seeking damages for the inadequate and incomplete work.

On or about December 21, 2000, Ingeneri contacted Anderson requesting information and documents. Anderson promptly provided those materials to Ingeneri. Anderson was never told by Ingeneri that any further papers or answers were required.

Commencing in January 2001, Anderson began to telephone Ingeneri for case status updates, and did so at least a dozen times over the next several months. Ingeneri did not respond to those inquiries.

On or about June 7, 2001, Wilbur's filed a motion for sanctions for failure to supply discovery. Ingeneri failed to inform Anderson that this motion for sanctions had been filed, and Ingeneri failed to provide discovery to Wilbur. An order to compel discovery was entered against Anderson. Anderson was not notified.

Subsequently, Ingeneri allowed an order of default to be entered against Anderson. Ingeneri did not inform Anderson that a request for default judgment had been filed, and failed to file any objection to the default being entered.

Ingeneri recognized his own misconduct in his letter to opposing counsel of January 10, 2002, and in his related motion to continue the hearing on damages of that same date. In the January letter, Ingeneri stated that "[t]he failure to provide

the [requested] discovery . . . was entirely attributed to [Ingeneri's] non-action and not to that of Mr. Anderson.” Ingeneri did not send copies of the letter or the motion to Anderson. Anderson continued to be uninformed as to the true status of his case. The damage hearing resulted in a February 25, 2002 judgment being entered against Anderson in the amount of \$64,015.36.

Anderson was never informed by Ingeneri of any court judgment being entered against him, and learned of that judgment on or about June 11, 2002, when he was served with a disclosure subpoena in connection with *Wilbur v. Anderson*. Shortly after being served with the subpoena, Anderson went to Ingeneri's office to obtain his file materials. At that time Ingeneri apologized for his misconduct, had no excuse, acknowledged that it was his fault, and stated he “would not walk away” from it.

Anderson's subsequent attempts to have the judgment vacated were unsuccessful, and he was forced to settle with Wilbur, and to pay Wilbur \$50,000. Anderson had to sell his wife's real estate to pay the settlement and he lost his retirement savings and his children's college fund savings.

Anderson sued Ingeneri for malpractice in the Superior Court (Penobscot County) and a default judgment in the amount of \$50,000 was subsequently entered.

Anderson complained to the Board of Overseers of the Bar concerning Ingeneri's misconduct. By Bar Counsel's letter of November 13, 2002, Ingeneri was notified and provided with a copy of Anderson's grievance complaint, and directed to respond to Bar Counsel by November 27, 2002. Ingeneri failed to respond despite Bar Counsel's second notice letter of December 2, 2002, sent by certified mail and received on December 4, 2002, by Ingeneri's agent.

Pursuant to M. Bar R. 7.1(d)(e), a Grievance Commission panel disciplinary hearing was held on April 3, 2003. The panel issued its report on the same date, finding probable cause for the suspension or disbarment of Ingeneri, and pursuant to M. Bar R. 7.2(b), directed Bar Counsel to commence this attorney disciplinary action with the Court.

At that April 3 hearing, Ingeneri testified under oath and made the following admissions and/or statements about his misconduct:

- a. He had mishandled Anderson's legal matter;
- b. When confronted by Anderson, he did tell him that he "had dropped the ball on his case" and was "sorry" for that;
- c. He had made no payment on the \$50,000 default judgment Anderson had obtained against him;
- d. He has no malpractice insurance coverage;
- e. He had "no explanation . . . as to a matter of law" to provide why he never informed Anderson about his case between July 26, 2001, and December 19, 2001; and

f. he did not return all of Anderson's calls about the status of his case.

Subsequent to the entry of default being entered against him, Ingeneri filed for bankruptcy protection resulting in an automatic stay, which stay remains in place. As a result of that stay, the Superior Court's default judgment in favor of Anderson in the amount of \$50,000 was set aside. Anderson has filed a claim in the Bankruptcy Court seeking to collect the \$50,000.

The Court finds, and Ingeneri does not challenge the findings, that Ingeneri has violated Bar Rule 2(c), failure to respond to Bar Counsel; Bar Rule 3.1(a), conduct unworthy of an attorney; Bar Rule 3.2(f)(3), conduct involving dishonesty, fraud, deceit, or misrepresentation; Bar Rule 3.2(f)(4), conduct that is prejudicial to the administration of justice; Bar Rule 3.6(a)(2), inadequate preparation of a client's matter; and Bar Rule 3.6(a)(3), neglect of a client's matter.

PRIOR HISTORY

Attorney Ingeneri has the following significant prior disciplinary record history on file with the Board of Overseers of the Bar:

1. March 11, 1978: "Letter of Reprimand" issued by the Court (Godfrey, J.) for "repeated delay in filing a brief on behalf of a client."
2. November 30, 1981: Three-month suspension from practice issued by the Court (Archibald, J.) for violation of M. Bar R. 2(c), 3.2(f)(3), and 3.6(a)(2)(3). Ingeneri's appeal was denied by the Law Court by Decision dated February 9, 1982.
3. April 11, 1995: public reprimand issued by Panel C of the Grievance Commission for violation of M. Bar R. 2(c) and 3.6(a)(3).

The Court finds that Ingeneri's misconduct involving Anderson was serious and resulted in significant injury and harm to the client, which has yet to be addressed or rectified by Ingeneri.

There is also a marked similarity between the misconduct which resulted in Ingeneri's suspension in 1981, and the misconduct in the present matter involving Anderson.

SANCTION

The seriousness of Ingeneri's violations of the Bar Rules require that he be suspended from the practice of law. Ingeneri argues that any imposed suspension of his right to practice be suspended, conditioned upon his compliance with certain conditions. Bar Counsel agrees that those conditions should be imposed, but because of Ingeneri's prior disciplinary history and the serious harm suffered by Anderson, urges the Court to impose a suspension from the practice of law for a period of at least six months. Anderson testified, and urged that a serious sanction be imposed based on the harm Ingeneri caused to him.

M. Bar. R. 2(a) provides that the purpose of bar disciplinary proceedings is not punishment, but rather the protection of the public from attorneys who, by their conduct, have demonstrated that they are unable, or likely to be unable, to discharge properly their professional duties.

Ingeneri, in his representation of Anderson, has demonstrated such an inability to properly discharge his professional duties. He has recognized his problem, identified by Fred A. Bloom, M.D., as major depression, an illness that can, as it did in this case, impair his ability to carry out his responsibilities as a practicing attorney. The illness is treatable and Ingeneri is taking steps to address his problem, and is treating with Dr. Bloom. It appears that with sufficient conditions involving monitoring, Ingeneri will be able to meet his professional responsibilities, and resume his practice.

Upon consideration of all the facts and evidence before this Court, the Court, imposes the following sanction: Ingeneri is suspended from the practice of law in the State of Maine for a period of six months, commencing July 1, 2004. All but three months of said suspension are hereby suspended, subject to the following conditions:

1. Winfred A. Stevens, Esq. is hereby appointed by the Court to serve as the Monitor for Ingeneri for a period of one year commencing October 1, 2004, unless terminated earlier as herein provided or by other order of this Court.

2. During the period of supervision, the Monitor shall receive monthly written reports from Ingeneri concerning the current status of matters in which he has been retained to act as counsel.

3. The Monitor is a volunteer who shall receive no compensation and who shall be expected to incur no expense.

4. Ingeneri will meet with the Monitor within twenty-five (25) days of the date of this Order and thereafter at the call and convenience of the

Monitor on a monthly basis, unless the Monitor should determine more frequent meetings are appropriate.

5. The Monitor shall have the right to withdraw and terminate that service at any time for any reason the monitor deems sufficient, including for reasons set forth in Paragraph 6 below. In the event of a withdrawal, the Monitor shall notify the Court and Bar Counsel, and Ingeneri shall then cooperate to obtain the services of an alternate Monitor to complete the remainder of the original Monitor's term.

6. If any aspect of the monitoring procedure creates a situation that is, or might be interpreted to be, a conflict of interest under the Maine Bar Rules (for example, if Ingeneri is or becomes opposing counsel concerning a matter involving the Monitor), then the Monitor may adopt any one of the following courses with the proposed result:

- a. the Monitor shall cease to act as such and a potential conflict is avoided;
- b. the Monitor shall continue as Monitor but totally exclude Ingeneri's client and matter in question from the monitoring process, so that no conflict is deemed to exist;
- c. the Monitor shall continue as Monitor, and obligate his firm to withdraw from the conflicting matter; or
- d. the Monitor shall continue as Monitor, and obligate Ingeneri not to participate in the matter and to obtain new counsel for his client(s).

7. If in the Monitor's judgment it is appropriate, the Monitor shall have the right to contact clerks of court, judges, or opposing counsel to determine the accuracy of Ingeneri's reports to him.

8. The Monitor shall have no contact with any of Ingeneri's clients and his only contact in the performance of the Monitor's duties shall be with Ingeneri or other persons contemplated by this Order. The participation by the Monitor in the monitoring of Ingeneri's practice shall be deemed not to create an attorney-client relationship between the Monitor and Ingeneri, or between the Monitor and Ingeneri's clients.

9. The Monitor shall file a confidential report with the Court on or before November 15, 2004, and quarterly thereafter or sooner if the Monitor deems it necessary, with copies to Ingeneri and Bar Counsel concerning any professional assistance the Monitor has provided to Ingeneri.

10. The Monitor will have the duty to report to Bar Counsel and to the Court any apparent or actual professional misconduct by Ingeneri of which the Monitor becomes aware or any lack of cooperation by Ingeneri with the provisions of this Order.

11. In the event a grievance complaint is received by Bar Counsel concerning alleged misconduct by Ingeneri occurring on this date or thereafter, such complaint shall be processed under either Bar Rule 7.1(c) or 7.1(d), as appropriate. In the event a preliminary review panel finds probable cause of misconduct under Bar Rule 7.1(d)(5), the matter shall then be filed directly with this Court under Bar Rule 7.2(b).

12. Any apparent violation of the conditions of this Order by Ingeneri shall be filed by Bar Counsel directly with the Court.

13. Ingeneri shall refer himself to the Maine Assistance Program for lawyers and judges (MAP) on or before June 1, 2004, and will undergo assessment and treatment to the satisfaction of the Director of MAP.

14. Ingeneri shall comply with notice provisions of Bar Rule 7.3(i)(1).

Dated: May 17, 2004

Robert W. Clifford, Associate Justice
Maine Supreme Judicial Court